Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Infrastructure	)	CC Docket No. 96-237
Sharing Provisions in the	)	
Telecommunications Act of 1996	)	

NYNEX COMMENTS

The NYNEX Telephone Companies

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Dated: December 20, 1996

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SUMMARY

NYNEX files these Comments in response to the Commission's NPRM addressing how to implement Section 259 of the Communications Act, the infrastructure sharing provision added by the Telecommunications Act of 1996. Section 259 requires the Commission to adopt regulations to ensure that incumbent local exchange carriers make available to qualifying carriers public switched network infrastructure, technology, information, and telecommunications facilities and functions. This availability is intended to enable qualifying carriers, which lack economies of scale and scope, to provide telecommunications and information services in areas where the qualifying carrier is fulfilling universal service obligations and does not compete with the providing LEC.

As discussed herein, the Commission should limit the Section 259 infrastructure sharing obligations to the Act's narrow requirements and definitions, which strictly define qualifying carrier status and limit where and how the shared capabilities may be used. Only certain independent telephone companies, primarily small, rural local exchange carriers, should be eligible to receive infrastructure sharing. Further, these qualifying carriers should be permitted to use infrastructure sharing only in their incumbent local exchange service areas.

There is an important distinction between Section 259 and Section 251

(Interconnection). These sections are mutually exclusive and complementary. Section 251 is intended to open local exchange markets to competition by allowing a telecommunications carrier to interconnect with and/or to purchase facilities or services from an ILEC for use in the service area of the incumbent. Section 259, by contrast, provides the means for a non-competing carrier to obtain network infrastructure sharing from an ILEC for use in the service area of the non-competing carrier in order to support that carrier's offerings where it is eligible for universal service support.

NYNEX also strongly supports the Commission's tentative conclusion (NPRM ¶ 7) that the best way to implement Section 259 is to articulate general rules and guidelines, and permit infrastructure sharing arrangements to be largely the product of negotiations among parties.

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NYNEX COMMENTS

I. INTRODUCTION AND OVERVIEW

The NYNEX Telephone Companies[1] (NYNEX) file these Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) released November 22, 1996, in the above-captioned matter. The purpose of this proceeding is to implement Section 259 of the Communications Act, the infrastructure sharing provision added by the Telecommunications Act of 1996 (the Act). Section 259 requires the Commission to adopt regulations to ensure that incumbent local exchange carriers (ILECs or providing LECs [PLECs]) make available to qualifying carriers public switched network infrastructure, technology, information, and telecommunications facilities and functions. This availability is intended to enable qualifying carriers, which lack economies of scale

[1] New England Telephone and Telegraph Company and New York Telephone Company.

and scope, to provide telecommunications and information services in areas where the qualifying carrier is fulfilling universal service obligations and does not compete with the PLEC.

As discussed herein, the Commission should limit the Section 259 infrastructure sharing obligations to the Act's narrow requirements and definitions, which strictly define qualifying carrier status and limit where and how the shared capabilities may be used. Only certain independent telephone companies [ITCs], primarily small, rural local exchange carriers, should be eligible to receive infrastructure sharing. Further, these qualifying carriers (QLECs) should be permitted to use infrastructure sharing only in their incumbent local exchange service areas.

There is an important distinction between Section 259 and Section 251 (Interconnection). These sections are mutually exclusive and complementary. Section 251 is intended to open local exchange markets to competition by allowing a telecommunications carrier to interconnect with and/or to purchase facilities or services from an ILEC for use in the service area of the incumbent. Section 259, by contrast, provides the means for a non-competing carrier to obtain network infrastructure sharing from an ILEC for use in the service area of the non-competing carrier in order to support that carrier's offerings where it is eligible for universal service support.

NYNEX also strongly supports the Commission's tentative conclusion (NPRM ¶ 7) that the best way to implement Section 259 is to articulate general rules and

guidelines, and permit infrastructure sharing arrangements to be largely the product of negotiations among parties.

II. SECTIONS 259 AND 251 SERVE VERY DIFFERENT PURPOSES, ARE MUTUALLY EXCLUSIVE AND COMPLEMENTARY

Central to this proceeding is the relationship between Sections 259 and 251. Section 259, while consistent with the overall pro-competitive goals of the Act, is not designed for the purpose of opening up local exchange markets to competition. That is the purpose of Section 251, a separate and distinct section. Section 259 was narrowly drawn by Congress to enable non-competing QLECs lacking economies of scale or scope -- generally perceived to embrace small, rural ITCs -- to obtain network infrastructure capabilities from other ILECs to help support QLEC services in those QLECs' universal service areas. The infrastructure sharing provisions of Section 259 are intimately related to the universal service principles of Section 254, which ensure that access to advanced telecommunications and information services will be provided to all regions of the Nation.[2] The intention is to continue the benefits that have been derived from, for example, the historical sharing of infrastructure between non-competing large companies and smaller, often rural, exchange companies.

Section 251, in sharp contrast with Section 259, is designed to enable telecommunications carriers to obtain from ILECs interconnection, unbundled network elements and telecommunications services at wholesale rates for resale in order to

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[2] See Section 254(c).

compete with ILECs in the local exchange marketplace. At the outset, NYNEX wishes to emphasize its commitment to complying with, and fulfilling the purposes of these distinct sections. NYNEX will continue to pursue and support initiatives fostering cooperation with ITCs and advancement of universal service (Section 259 and Section 254), as well as opening up local exchange markets to competition (Section 251).

The Commission observes that "[s]ection 259 appears to apply only in instances where the qualifying carrier does not seek to offer certain services within the incumbent LEC's exchange area, whereas Section 251 plainly contemplates access by new entrants that seek to provide local exchange or exchange access service within the incumbent's service area."[3] The Commission goes on to state that, based on this distinction:

> we could conclude that Section 259(a) provides a comprehensive -- and exclusive -- statutory means for a qualifying carrier, defined pursuant to Section 259(d), to obtain "public switched network infrastructure, technology, information, and telecommunications facilities and functions" from the incumbent LEC where the qualifying carrier does not propose to use these to compete in the incumbent LEC's service area.
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> . . .
>
> Interpreting the scope of Section 259(a) to be relatively narrow would appear to be supported by its requirement that only qualifying carriers, defined pursuant to Section 259(d), may obtain Section 259 arrangements from incumbent LECs.[4]

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[3] NPRM ¶ 11. See also Implementation Of The Local Competition Provision In The Telecommunications Act of 1996, CC Docket No. 96-98, NPRM released April 19, 1996, ¶ 171 ("a reading of section 251(c)(2) in context shows that it is part of a provision designed to promote competition against the incumbent LEC, and on this basis, the requirements set forth therein could arguably be understood to apply only to arrangements between *competing* carriers.")

[4] NPRM ¶¶ 11-12. See also NPRM ¶ 26.

NYNEX urges the Commission to adopt these points as conclusions in its Order. This will carry through on the Commission's well-founded tentative conclusion "that the requirements of Section 259 should be interpreted, wherever possible, as complementary to the Commission's implementation of other sections of the 1996 Act."[5]

Many agreements and arrangements between RBOCs (including NYNEX) and small independent telephone companies, primarily rural carriers, cover matters that will come under the infrastructure sharing provisions of Section 259. Agreements between neighboring, non-competing LECs (including ITCs) have historically been developed pursuant to Section 201 of the Communications Act. These agreements vary by state, but generally address the following: ITC-billed intraLATA toll services; planning, provisioning and maintenance of access services; private line (including foreign exchange services); interLATA and intraLATA billing services; intraLATA operator and operator-type services; directory assistance service; directory services; exchange local interconnection service, facilities leasing, mobile services; interstate "meet point" compensation agreements; SS7 and 800 database services; enhanced 911 services; dual relay services; cellular and paging services. The agreements are typically designed to permit a rural ITC to provide toll service to end users in its exchange territory. Often,

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[5] NPRM ¶ 6. [Emphasis added.] See also definition of "complementary" in Webster's New Collegiate Dictionary (1981) ("1: serving to fill out or complete 2: mutually supply each other's lack ...").

these agreements are made to meet regulatory requirements, such as extended area service (EAS) or basic service calling areas (BSCAs).

There are 85 ITCs, excluding Rochester Telephone Company, within the NYNEX region. The vast majority of these are small companies that provide telephone service in primarily rural areas throughout upstate New York, Vermont, New Hampshire, Maine and a small part of Massachusetts. These 85 ITCs provide telephone service to approximately 850,000 access lines. The 7 largest of these companies account for 51% of the ITC access lines and the remaining 78 ITCs account for 49% of the access lines.

Over the years NYNEX has developed a productive relationship with the ITC community as service providers who have worked together to insure that all customers have access to quality and affordable telephone service. NYNEX expects this useful relationship to continue.

To the best of our knowledge, very few ITCs intend to compete with NYNEX within the NYNEX region. Those ITCs who will compete with NYNEX can avail themselves of the processes in Section 251 of Act to do so. The vast majority of the ITCs will continue their historical relationship with NYNEX under Section 259 of the Act.

Agreements or arrangements to make infrastructure available under Section 259 cannot be covered by Section 251 as well. Again, these sections serve entirely different purposes. Section 251 addresses local exchange competition and Section 259 addressees cooperative sharing of infrastructure between non-competing LECs in line with

advancing universal service.[6] The mutually exclusive character of these sections is evidenced by their conflicting terms.

First, in Section 259(b)(6) Congress expressly provided that the ILEC entertaining a request for infrastructure sharing is not required to satisfy that request where the requesting carrier seeks to offer services or access in the ILEC's telephone exchange area, whereas Section 251 is aimed at facilitating competition. Second, Section 259(b)(3) provides that the Commission must ensure that providing LECs (PLECs) are not treated as common carriers by virtue of exercising their Section 259 obligations. Thus, for example, the PLEC cannot be compelled to make infrastructure agreements or arrangements arrived at with one QLEC available to other requesting carriers.[7] Yet, Section 252(i) requires a LEC to make available any interconnection, service or network element provided under any Section 251 agreement approved pursuant to Section 252 (including Section 251 agreements) to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the

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[6] It is noteworthy that Section 259 (Infrastructure Sharing) comes after Section 254 (Universal Service) which comes after Section 251 (Interconnection). This logical progression suggests Congress intended Section 259 to help advance universal service and fill out what was unaddressed by Section 251 -- requests for sharing by non-competing LECs.

[7] The PLEC simply must ensure that each QLEC receives infrastructure sharing (consistent with economic reasonableness and the public interest) on just and reasonable terms and conditions that confer full benefits from the PLEC's economies of scale and scope. See Section 259(b)(1) and (4).

agreement. In order to reasonably reconcile these provisions, Section 251 must be deemed to only cover requests by competitors in the ILEC's service territory.[8]

Nothing in Section 251 overlaps with or undermines Section 259. Congress specifically continued the FCC's preexisting Section 201 authority over agreements between non-competing LECs (such as an RBOC cooperating to help a neighboring rural ITC provide full and advanced service to its end users). This is shown by Section 251(i), which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under § 201."[9]

Further, there is no indication that Congress meant to disturb such agreements by the enactment of Section 251. Each of the ITCs is itself an ILEC with obligations under Section 251(c). However, the interconnection obligations required of ILECs under Section 251(c)(2) are not owed to other ILECs, but rather to "requesting telecommunications carriers" that seek to provide "telephone exchange service and

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[8] In its Docket 96-98 Order released August 8, 1996 (¶ 169), the Commission concluded that agreements between neighboring LECs are subject to Section 252 filing and review provisions. The Commission relied on the fact that Section 252(a)(1) refers to "any interconnection agreement." The fact that interconnection agreements between neighboring LECs (including non-competing LECs) must be submitted for State approval under Section 252 need not and should not lead to the conclusion that non-competing LECs can obtain interconnection under Section 251.

[9] The legislative history records that "[n]ew 251(i) makes clear the conferee's intent that the provisions of new Section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under Section 201 of the Communications Act." See H.R. Conference Report No. 104-458 ("Conference Report") (1996), p. 123.

exchange access" within the incumbent LEC's local exchange;[10] they do not extend to interconnection requests by independent telcos to enable such companies to provide local exchange and exchange access service within their own territory.[11]

The legislative history establishes that these ITC agreements were never intended to fall within the scope of Section 251. References to relevant House and Senate activities[12] underscore the fact that Section 251 addresses competition between incumbent LECs and "new entrants" within incumbent LEC exchanges. Thus, with respect to H.R. 1555, the legislative history records:

- "Section 242(a)(1) [of the House amendment] sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities."[13]

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[10] See Section 3(47): "The term 'telephone exchange service' means (A) service within a telephone exchange, or within a connected system of telephone exchange within the same exchange area . . . ." [Emphasis added.]

[11] An "Incumbent Local Exchange Carrier" is defined in Section 251(h) as a local exchange carrier that "on the date of enactment" of the Act "provided telephone exchange service in such area," and on such date was deemed to be a member of the exchange carrier association. Both the larger LECs and the ITCs fall squarely within the definition of an ILEC, providing service in their respective exchanges, and outside the scope of Section 251(c) which is designed to promote competition between an incumbent and a requesting carrier within the same exchange. That Congress understood these ITCs to be ILECs is manifest from its further action in Section 251(f) to exempt certain rural carriers from incumbent LEC obligations.

[12] Both the Senate and House versions of the Act established LEC obligations corresponding to Section 251. For example, Section 241 of the House Bill established a general interconnection obligation applicable to all common carriers. See also Section 251 of the Senate Bill (S. 652).

[13] Conference Report, p. 120. [Emphasis added.] House Section 242(b)(1) is generally reflected in Section 251(c) of the Act.

- "Section 242(b)(1) [of the House amendment] describes the specific terms and conditions for interconnection, compensation, and equal access, which are integral to a competing provider seeking to offer local telephone services over its own facilities."[14]

Similarly, Senate Bill 652 was designed to allow "other parties to provide competitive service through interconnection with the LEC's facilities."[15]

Of course, ITCs can exercise the rights of Section 251 should they decide to compete in another LEC's local franchise area. However, to the extent an ITC requests only infrastructure/facilities necessary to provide its own separate exchange service or exchange access, such requests and interconnection agreements do not fall properly within Section 251, but are covered by Section 259. Further, this conclusion does not impair the competition in local exchange markets that both Congress and the FCC intend to promote.[16]

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[14] Conference Report, p. 120. [Emphasis added.] House Section 242(b)(1) is also generally reflected in Section 251(c) of the Act.

[15] Congressional Record S7893, Senate Floor Debate On S. 652 (June 7, 1995) (Statement of Senator Pressler). [Emphasis added.] See also id. at S8137 (June 12, 1995) (Statement of Senator Kerrey): "in that first section [Section 251] perhaps most important is a checklist that says here are the sorts of things that have to occur in order to provide that interconnection, in order to give that interconnection opportunity, for, as I said, it is either going to be a long distance company consumers are likely to see or it could be some company you never have seen before that tries to come in and provides local competition." [Emphasis added.]

[16] In fact, a misinterpretation of Section 251 to cover ITCs having agreements with non-competing LECs would frustrate the Congressional purpose of promoting "infrastructure sharing" and "cooperation," rather than competition, among ITCs and the larger LECs to advance the public interest. See Section 259.

In short, Congress has made a clear determination that ILEC agreements with non-competing ITCs are to be cooperative and supportive (Section 259). They should not be chilled, disrupted and perhaps undone by LEC competitors. Section 259 helps support ITC non-competing service, while Section 251 helps support telecommunications carriers' competing local exchange offerings. Accordingly, NYNEX urges the Commission to adhere to the important distinctions between Sections 259 and 251, and not to permit carriers to "game the system" by trying to pursue duplicative requests and pick and choose, or "shop" between those sections. Thus, for example, a carrier should not be permitted under Section 251 to obtain infrastructure from one ILEC that would not be for the purpose of competing with that ILEC in its territory, but to compete with other carriers. Such a request might be covered by Section 259, where the requesting carrier meets the purpose test in Section 259(a) and the specific qualification requirements of Section 259(d) (including offering services without preference throughout the area where it is fulfilling universal service obligations). Also, under the Section 259 process, a carrier should be foreclosed from obtaining infrastructure capabilities from an ILEC in order to compete with that ILEC. Such a request would properly be addressed by the Section 251 process.

III. THE FCC SHOULD IMPLEMENT SECTION 259 TO NARROWLY FILL OUT SECTION 251, AND SHOULD DEFER TO PARTIES' NEGOTIATIONS CONDUCTED UNDER BROAD FCC RULES AND GUIDELINES

A. Overall Implementation Approach

The FCC's overall approach in implementing Section 259 should be guided by two principles. First, as discussed above, the FCC should adhere to the narrow purpose and scope of Section 259 as distinct from Section 251. Second, the Commission should affirm its tentative conclusions (NPRM ¶ 7) that:

> the best way for the Commission to implement Section 259, overall, is to articulate general rules and guidelines. We believe that Section 259-derived arrangements should be largely the product of negotiations among parties.

B. Section 259(a)

NYNEX suggests that the scope of the terms "public switched network infrastructure, technology, information, and telecommunications facilities and functions" need not, and should not be interpreted in codified rules by the Commission, but rather should be the product of the negotiations among the parties, and the product of those evolving technologies that lie ahead.[17] Today's definition may not suit tomorrow's network infrastructure, and could quickly become obsolete.

The Commission tentatively concludes that Section 259(a) requires mandatory licensing, subject to the payment of reasonable royalties, of any software or equipment

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[17] See NPRM ¶ 9.

necessary to gain access to the shared capability or resource by the qualifying carrier's equipment.[18] NYNEX believes such obligation will properly be subject to private parties' intellectual property rights and obligations. For example, NYNEX may not have the right to sublicense certain software, and there is no basis to presume Congress intended to override property rights.

Finally, the term "information" in Section 259(a) should not be read in any way to suggest a QLEC may obtain proprietary marketing or business information.[19] The information shared relates only to the extension of the network to meet the obligations referred to in Section 259.

C. Section 259(b)

Under Section 259(b)(1), the FCC's regulations shall not require the PLEC to take any action that is "economically unreasonable" or "contrary to the public interest." NYNEX suggests that the Commission need not establish standards for what these terms intend.[20] This area should be left to the negotiation process.

Under Section 259(b)(3), a PLEC cannot be compelled by the FCC or State to make infrastructure sharing a common carrier offering. Thus, for example, such sharing offerings will not be subject to nondiscrimination provisions in Title II (see Section

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[18] See NPRM ¶ 15.

[19] See NPRM ¶ 16.

[20] See NPRM ¶ 20.

202(a)). Therefore, no standards are appropriate regarding availability of arrangements on the same terms and conditions to all similarly situated QLECs.[21]

Section 259 does not characterize infrastructure sharing offerings as including "services" per se. However, NYNEX believes there could be instances where a PLEC has a tariffed offering (which perhaps materialized from the Section 251 process) which could serve (perhaps with some modifications) to satisfy a Section 259 request. PLECs should have the option to satisfy Section 259 requests with existing common carrier offerings. Clearly, Section 259(b)(3) is designed to protect a PLEC from being compelled to make infrastructure sharing offerings available on a common carrier basis.

The Commission invites comment on the requirement in Section 259(b)(4) that the PLEC make infrastructure sharing available on just and reasonable terms and conditions that permit the qualifying carrier "to fully benefit from the economies of scale and scope of such [PLEC]."[22] NYNEX believes that this "fully benefit" requirement does not contemplate incremental cost pricing. It would be appropriate for pricing to recover a pro rata share of fully allocated costs, based on actual accounting costs including a fair return on investment reflecting business risk, etc. Here again, this area is best left to the negotiation process, and the Commission's rules should simply codify the language of the Act.

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[21] See NPRM ¶ 22.

[22] See NPRM ¶ 23.

Accordingly, NYNEX firmly believes that the Commission need not and should not promulgate national standards to govern pricing of the specifics of sharing arrangements. The legislative history supports this point. In the Senate floor debate on the Conference Report (February 1, 1996), Senator Hollings entered various "Telecommunications Bill Resolved Issues" into the Congressional Record, including (S689):

> " ... 23. Infrastructure Sharing: allows small telephone companies to share the infrastructure provided by the RBOCs; parties may negotiate the rates for such sharing." [Emphasis added.]

With respect to Section 259(b)(5), any guidelines established by the Commission to promote cooperation between those carriers involved in Section 259 arrangements should be limited to the informal consultation process, the existing declaratory ruling procedures, and the Section 208 formal complaint process referenced by the Commission.[23]

Section 259(b)(6) provides that the Commission's regulations:

> ... shall ... not require a local exchange carrier to which this section applies to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area ....

The Commission seeks comment on whether the term "services or access" in Section 259(b)(6) applies to all "public switched network infrastructure, technology, information,

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[23] See NPRM ¶ 25.

and telecommunications facilities and functions" available pursuant to Section 259(a), or whether Section 259(b)(6) limits an ILEC's right to deny agreements to only a limited set of provisions, namely, "services or access."[24] NYNEX believes that the term "services or access" does not refer to the PLEC's offering but refers to the QLEC's offering which benefits from infrastructure sharing. This is shown by the language in Section 259(a) which refers to infrastructure sharing being made available " ... for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services ...." [Emphasis added.] Further, neither the term "services" or "access" is included in the Section 259(a) language describing what the PLEC must make available. Accordingly, the intent of Section 259(b)(6) is that a PLEC cannot be compelled to provide infrastructure capabilities to be used by the requesting carrier to compete with the PLEC for any services or access provided to others.

D. Section 259(c)

Section 259(c) provides that a PLEC shall provide to each party to an infrastructure sharing agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

NYNEX believes this requirement is separate and distinct from disclosure requirements under Section 251. For example, Section 259 disclosure is only to the

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[24] See NPRM ¶¶ 26-27.

parties to the infrastructure sharing agreement. NYNEX suggests that harmonizing the Section 259(c) and Section 251 notice requirements is unnecessary,[25] given the very different nature of those sections as earlier discussed. Furthermore, unlike the other subsections of Section 259, Section 259(c) does not require the Commission to issue regulations.

E. Section 259(d)

Section 259(d) defines a qualifying carrier as one that "lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section."

NYNEX urges the Commission to interpret narrowly the requirement that a QLEC lack economies of scale or scope. The resulting class of QLECs should be limited to a subset of the current ITCs, as such economies are not always related to size or rural nature of the QLEC. Furthermore, economies should be determined up to the holding company level, (e.g., seemingly small companies may have economies by virtue of their affiliation with large holding companies).[26]

The Commission states that it could "create a presumption that a telecommunications carrier 'lacks economies of scale or scope' if its operations are within the limitations on service area and access lines set forth in the definition of 'rural

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[25] See NPRM ¶ 29.

[26] See NPRM ¶ 37.

telephone company' in Section 3(37) of the Act."[27] The Commission should adopt this presumption, which is supported by the legislative history of the Act. Specifically, for example, Senator Hollings stated:

> The farm team, the rural areas - we wanted to protect those. We learned in airline deregulation that we did not protect the rural areas, sparsely settled areas. So we made, under the leadership of Senator Stevens, requirements that any competition, any competitor coming in must serve the entire area, and the States had the authority to say how that competition would develop in the rural areas.
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> We provided infrastructure sharing with the RBOCs, and so on down the list."
>
> . . .
>
> We protected the rural areas .... The infrastructure sharing is provided for from the regional Bell operating companies to help them sustain.[28]

Furthermore, Senator Kerrey stated that the Senate Bill "contains strengthened provisions for rural customers: ... infrastructure sharing."[29]

On a more general level, if any theme was pervasive in the Act, it was that no segment of America -- particularly rural areas -- should be left off the information superhighway. Indeed, the universal service principles in Section 254(b)(2) and (3)

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[27] NPRM ¶ 37.

[28] Congressional Record S692, S717, Senate Floor Debate On Conference Report (February 1, 1996). [Emphasis added.]

[29] Congressional Record S8443, Senate Floor Debate On S. 652. See also id. at S8457 (Statement of Senator Exon): "[S. 652] has many good features .... It includes important market protections, including the farm team provisions of last year, all of which were incorporated here in the bill this year. It includes the Grassley-Exon infrastructure sharing provision."

emphasize access to advanced services in all regions of the Nation, and particularly access in rural and high cost areas. Senator Rockefeller stated that "[rural] areas have the equivalent of a dirt road when it comes to telecommunications ...," and urged that rural areas be able to also enjoy the benefits of "this information superhighway that is unfolding before our eyes."[30]

The Section 259(d) definition of qualifying carrier also includes the requirement that such carrier "offer telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under Section 214(e)." As the Commission notes (NPRM ¶ 38): the Federal-State Joint Board on universal service has recently issued recommendations on criteria for determining which carriers are eligible to receive universal service support under Section 214(e); and the Commission will complete a proceeding by May 8, 1997 to implement the Joint Board's recommendations. Notably,

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[30] Congressional Record S7980, 7982, Senate Floor Debate On S. 652 (June 8, 1995). See also id. at S7979 (Statement of Senator Snowe: "[n]o matter where they live in America, everyone should be entitled to have access to the information superhighway which will be so much a part of our future."); id. at S8004 (Statement of Senator Dorgan: "[t]hat is why another part of this bill that I care very much about are the protections in this bill for rural America - not protections against competition, but protections to make sure we have the same benefits and opportunities in rural America for the build-out of the infrastructure of this telecommunications revolution, as we will see in Chicago, Los Angeles, New York, and elsewhere.") [Emphasis added.]; Congressional Record H1163, House of Representatives Floor Debate On Conference Report (February 1, 1996) (Statement of Representative Lincoln); Congressional Record S700, Senate Floor Debate On Conference Report (February 1, 1996) (Statement of Senator Burns).

even if a carrier is eligible for universal service support under Section 214(e), Section 259(d)(2) provides that, to qualify for infrastructure sharing, the carrier must meet the further requirement of making universal service offerings available "without preference" throughout its service area. The Commission should interpret this requirement to mean that the qualifying carrier must itself be an ILEC in that area, and offer common carrier services on a facilities basis.

Accordingly, in line with narrowly applying Section 259, the FCC should interpret the Section 259(d)(2) definition of qualifying carrier in a way that primarily embraces small, rural ILECs.

IV. CONCLUSION

The FCC should narrowly interpret Section 259 as giving those independent telephone companies lacking economies of scale and scope (principally small, rural telephone companies) the means to obtain infrastructure sharing from incumbent LECs in cooperative, non-competing arrangements consistent with universal service goals. Section 259 is complementary to and mutually exclusive of Section 251, which covers interconnection requests by competing telecommunications carriers. Finally, the Commission's rules implementing Section 259 should largely defer to the negotiation

process among parties, and at most set forth general rules and guidelines tracking specific provisions of Section 259.

Respectfully submitted,

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